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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,946	07/25/2003	Nancy Lee Schulson	10215-2-1	3222

7590

08/22/2005

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EXAMINER
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BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 08/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/626,946	<b>Applicant(s)</b> SCHULSON, NANCY LEE	
	<b>Examiner</b> Michael G. Bogart	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 July 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 22-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) 1-34 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>27 December 2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restriction***

This application contains claims directed to the following patentably distinct species of the claimed invention:

- I. A disposable shirt.
- II. Disposable pants.

Applicant is required under 35 U.S.C. § 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the

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examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. § 103(a) of the other invention.

During a telephone conversation with Harold Stotland on 15 August 2005 a provisional election was made without traverse to prosecute the invention of I, claims 1-21. Affirmation of this election must be made by applicant in replying to this Office action. Claims 22-34 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Drawings***

The drawings received 25 July 2003 are informal and are acceptable for examination purposes only. New formal drawings will be required upon allowance of the application.

### ***Specification***

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested:

--Disposable clothing including panels having edges joined by elasticized material.--

### ***Claim Rejections – 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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Claims 3, 4, 15 and 16 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 3 and 15 recite a non-woven elastomeric meltblown fabric. Claims 4 and 16 recite a stretch bonded laminate. These limitations are not expressly supported by the specification.

The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9 and 21 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 recites the limitation "said non-woven material" in line 1. It is not clear whether applicants intend to claim the non-woven panel material of claim 1, the non-woven elastomeric meltblown fabric of claim 3 or the non-woven polymeric semipermeable material of claim 8.

Claim 21 recites the limitation "said non-woven material" in line 1. It is not clear whether applicants intend to claim the non-woven panel material of claim 10, the non-woven elastomeric meltblown fabric of claim 15 or the non-woven polymeric semipermeable material of claim 20.

***Claim Rejections – 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5, 7, 10, 17 and 19 are rejected under 35 U.S.C. § 102(b) as being anticipated by Nishikawa (JP 64-014306 A).

Regarding claim 1, Nishikawa teaches a disposable garment (1) made from a number of individual panels, said garment (1) comprising:

at least two individual panels which, when attached together, form said garment (1),  
each said panel formed from non-woven material (2),  
each said panel having one or more panel edges which, when joined to corresponding edges on other of said panels form said garment;  
means (5) for joining said panel edges one to the other,  
said joining means (5) comprising elasticized material (6) attached to one said edge on one said panel and to one said corresponding edge on another said panel,  
said elasticized material (6) capable of stretching in a direction of major stress when said garment (1) is worn whereby said panels are not stretched (see marked figures 2 and 3, below; English language patent abstract).

Regarding the limitation regarding the elasticized material being made to stretch, this is a functional limitation. Functional limitations define a device by what it does, as opposed to what

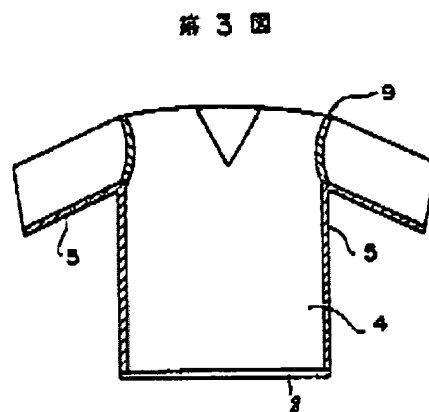
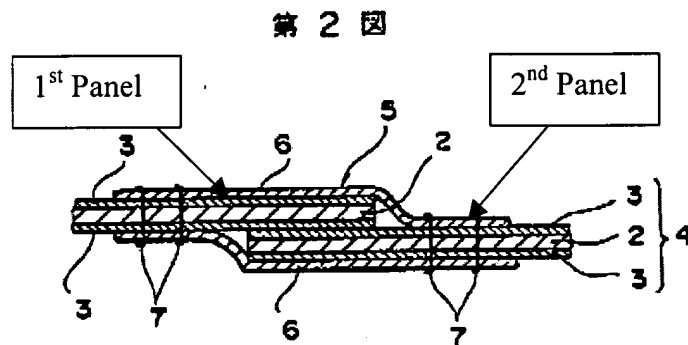
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is. A prior art element which can perform according to that limitation meets the claim. MPEP § 2173.05(g).

Regarding claim 10, Nishikawa teaches a shirt or shirt like garment (1)(figure 1).

Regarding claims 5 and 17, Nishikawa teaches a layer (2) formed from non-woven absorbent material (2)(abstract).

Regarding claims 7 and 19, Nishikawa teaches an inner layer of semipermeable material (3) covering the absorbent layer (2)(abstract).



***Claim Rejections – 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4, 6, 8, 9, 14-16, 18, 20 and 21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Nishikawa as applied to claims 1, 5, 7, 10, 17 and 19, above, in view of Lippert *et al.* (US 4,916,005).

Nishikawa (English translation abstract) is silent as to the specific materials which make up the absorbent and elastic materials.

Regarding claims 2 and 14, Lippert *et al.* teach an absorbent article including an absorbent non-woven material including polypropylene fibers (column 5, lines 29-39).

Regarding claims 6 and 18, Lippert *et al.* teach an absorbent component comprising a hydrophilic material (column 6, lines 20-26).

Regarding claims 3, 4, 15 and 16, Lippert *et al.* teach an absorbent garment having elastic comprising stretchbonded non-woven elastomeric meltblown fabric (column 6, lines 35-65).

Regarding claims 8, 9, 20 and 21, Lippert *et al.* teach a non-woven semipermeable material (40) comprising polypropylene (column 5, lines 6-28).

The use of such materials as an absorbent, elastic or semipermeable component is well known in the art and are just a few of many known mechanical equivalents which are suited for this purpose.

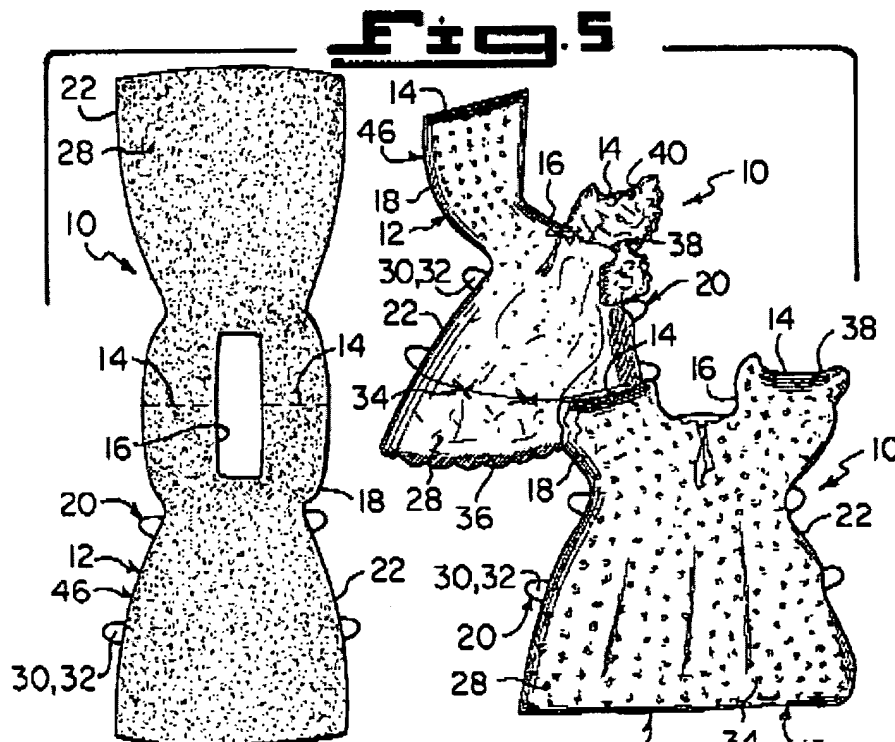


At the time of the invention, it would have been obvious for one of ordinary skill in the art to use the various materials of Lippert *et al.* for use in the clothing of Nishikawa in order to provide well known and readily available materials for its manufacture.

Claims 11-13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Nishikawa and Lippert *et al.* as applied to claims 1-10 and 14-21 above, and further in view of Anderson (US 6,049,909 A).

Nishikawa and Lippert *et al.* do not teach the specifics of the top seam.

Anderson teaches such a top seam structure (38)(figure 5, below).



At the time of the invention, it would have been obvious for one of ordinary skill in the art to add the top seam structure of Anderson to the device of Nishikawa and Lippert *et al.* in

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order to provide for a fastenable shirt or blouse that has stretches and conforms to the shoulder area of a wearer.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart  
16 August 2005

**TATYANA ZALUKAEVA  
PRIMARY EXAMINER**

